ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability	))))))))	CC Docket No. 98-147

COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

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COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

The Commercial Internet eXchange Association ("CIX"), by and through undersigned counsel, hereby submits its comments on the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced proceeding concerning long-term standards and practices for spectrum compatibility and line sharing.[1] The Commission issued this FNPRM and companion First Report and Order in order to remove barriers to competition and adopt measures to promote competition in the advanced services markets. The measures taken in the instant proceeding will create incentives for advanced service providers to innovate, develop and deploy new technologies.[2]

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1 *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Further Notice of Proposed Rulemaking*, CC Docket No. 98-147, FCC 99-48 (released March 31, 1999) ("FNPRM").

2 *FNPRM* at ¶ 4.

I. SUMMARY

CIX is a trade association whose member companies represent over 150 Internet Service Provider networks that handle over 75% of the United States' Internet traffic.[3] CIX works to facilitate global connectivity among commercial Internet Service Providers ("ISPs") in the United States and throughout the world. CIX supports the deployment of digital subscriber line ("DSL") services and other data access solutions that encourage the evolution of a competitive data access market. To that end, CIX supports the institution of mandatory DSL line sharing as a means to facilitate the development of a competitive market for the provision of advanced services (e.g., DSL). Competition in the DSL market will allow CIX members to choose from a host of DSL providers or to provide such service themselves, allowing them to compete directly with ILEC-affiliate Internet offerings.

Mandatory DSL line sharing is essential to the development of a competitive market for the provision of advanced services. Shared line access makes it possible for a competing carrier or ISP to offer advanced services over the same line that a consumer uses for voice services, without requiring the competing carrier to also provide voice service to its customers. As the Commission noted, "allowing consumers to keep their voice provider while allowing them to obtain advanced services on the same line will foster consumer choice and promote innovation and competitive deployment of advanced services."[4] Moreover, the ability of ISPs and

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[3] A CIX membership list is attached hereto. The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

[4] *FNPRM* at ¶ 94.

competitive carriers to provide such advanced service offerings on a more efficient and expeditious basis will ultimately benefit consumers with lower prices.

II. CONSUMER CHOICE FOR ISP SERVICES MUST BE PRESERVED IN THE DSL ENVIRONMENT

A. *Competition for DSL Will Further a Competitive Internet Market*

The availability of reasonably priced high-speed, broadband Internet access to residential customers will significantly increase use of the Internet. However, if a small group of powerful companies are able to effectively keep competitive DSL providers out of the market through the imposition of unnecessary and/or duplicative costs (e.g., requiring stand-alone lines to offer competitive DSL service), the diversity and vitality of the Internet industry will be in serious jeopardy. If a competitive market for the provision of DSL transport services is threatened, so too is the vitality and growth of the ISP market which relies on reasonably priced transport services. Through this FNPRM, the Commission has the opportunity to ensure that the introduction of new transport technologies like DSL service are not stifled by the ILECs' control over the local loop.

Line sharing is critical to preserving consumer choice for Internet offerings. As advanced services are deployed, the new technological architectures for the provision of such services should not result in a reduction in the number of ISPs offering service to consumers. Without mandatory line sharing, there is a significant threat that many existing ISPs will be forced out of the market because of their inability to obtain reasonably priced transport services. This threat is a direct result of the continued ILEC monopolies over the local telephone markets. If Commission action is not taken in the form of mandatory line sharing, success of our nation's ISPS ultimately will be determined by their access to the local loop to provide advanced services rather than by the diverse and innovative products and services that they offer their customers.

It is critical that the Commission not underestimate the importance of adopting rules that will ensure the continued growth of a dynamic and diverse ISP industry. Today, the vast majority of consumers obtain their Internet services from independent ISPs, not the Internet offerings of the ILECs. Additionally, approximately ninety-six percent (96%) of Americans have access to at least four (4) ISPs. This competitive ISP market is in part responsible for much of the growth in the Internet industry. However, emergence of a similarly competitive ISP market in the advanced services arena is dependent on the emergence of a competitive market for efficient and competitively priced transport services (e.g., DSL). Without competitive services connecting the end-user to the ISP, the ILEC-affiliated ISP stands to dominate the market to the detriment of consumer choice.

B. *An Unregulated Internet Industry That Offers Innovative Services Must Be Preserved*

Effective ISP choice exists when a customer can select the services of any ISP within the market and the ILEC would be indifferent to the customer's choice. As a practical matter, however, ILECs are rarely (if ever) indifferent. ILECs and their affiliates are also active in the ISP business, and their obligation to offer telecommunications services on a non-discriminatory basis often conflicts with their incentives to sell an integrated package of telecommunications and ISP service.

One of the keys to the success of the Internet has been the potential for complete independence between the Internet services and the underlying telecommunications carriers.[5] In the dial-up Internet market, Internet service providers are able to exclusively offer Internet services through an underlying carrier's facilities. This telecommunications architecture does

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[5] The existence of an ISP industry separate from that of the transmission providers allows ISPs to be more focused and responsive to customer needs. Without line sharing, the provision of independent Internet service will be threatened along with the benefits that result from specialization.

not require that ISPs become carriers in order to offer their services. Some ISPs have elected to become CLECs, and many have opted to concentrate solely on Internet offerings and obtain telecommunications services from other companies. These alternative business models have been very important to the growth of the medium. The Commission should ensure that as the advanced services framework over the monopoly ILEC facilities continues to develop, ISPs are not forced to become regulated in order to take advantage of new technologies. The Commission may wish to consider allowing ISPs unbundled network elements that would allow ISPs to offer their services without becoming subjected to the panoply of common carrier regulation.

III. THE COST OF THE LOOP AND RELATED CENTRAL OFFICE EQUIPMENT COMMON TO DSL AND LOCAL PHONE SERVICE SHOULD BE ALLOCATED IN A MANNER THAT ENSURES COMPETITION

A. *Competitors Should Be Allowed The Same Opportunities As ILECs To Offer Advanced Services Over The Same Line On Which ILEC Monopoly Telephony Is Offered*

Currently, a competitive provider that offers only DSL service must offer such services over an unbundled stand-alone loop acquired from the local exchange carrier. A competitive DSL provider must recover all of the costs of its stand-alone loop from the service charges it imposes on its customers. As a general matter, this requires the provider to charge more for its DSL services, making its service significantly more expensive than similar services offered by the ILEC. As such, new entrants providing DSL services that compete with those offered by the ILEC are at a significant competitive disadvantage. As the Commission stated, "[s]hared line access could . . . remove any cost disadvantage that an advanced services only provider might face if it had to provide advanced services over a stand-alone line."[6]

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[6] *FNPRM* at ¶ 93.

Without mandatory line sharing a customer must purchase a second line in order to connect to services of a competitive data service provider. In contrast, the ILECs are able to provide both voice and data service over a single line. If the ILECs are allowed to force their competitors onto a second line, the customer will rationally choose to avoid the second-line expense and opt for the ILEC DSL service. This is a classic example of the ILEC using monopoly facilities to squeeze out competition.[7] To avoid a virtual "squeeze out" of competition, it is imperative that the Commission adopt rules which require mandatory line sharing.

B. *Common Costs Associated With the Provisioning of DSL and Voice Telephony Must Be Allocated Appropriately*

The regulatory right to line sharing alone is not enough to ensure a competitive DSL market. In order to recognize the benefits associated with line sharing, the outside plant costs for voice telephony and DSL service must be allocated in a manner that will not discriminate against competitors. It is essential that ILECs properly allocate the costs of their DSL service to ensure that the costs of operating and maintaining the line are fairly apportioned among all providers, including the underlying ILEC. Proper allocation of ILEC costs and fair apportionment of line costs, will ensure that line sharing is economically feasible.

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[7] For example, local exchange service continues to be dominated by monopoly providers. This exists in large part as a result of ILEC practices that continue to vertically integrate their local telecommunications services, which often results in anti-competitive cross-service subsidization. One of the goals of the Telecommunications Act of 1996 is to dismantle this model of local telecommunications through the promotion of CLEC market entry. To allow ILECs to offer their DSL service over the same line as their voice service, while not allowing competitors to offer their DSL service over the same line as the ILEC voice service, would be antithetical to the establishment of competitive services like those which currently exist for the Internet.

Bell Atlantic's recently announced Volume Discount Tariff Plan ("VTDP")[8] for its Infospeed DSL Services demonstrates the ease with which the ILEC can, and will, misallocate costs to benefit their own DSL offering if Commission action is not taken. The VTDP effectively undercuts the ability of CLECs and ISPs to competitively provide DSL and Internet services over the monopoly controlled local loop.

First, Bell Atlantic's tariff charges make it almost impossible for a competing DSL provider to match Bell Atlantic's retail rates because such competitive providers must pay prohibitive charges for a Bell Atlantic loop. In turn, ISPs that seek to obtain DSL service from a competing DSL provider are limited in their choice of DSL over which to competitively offer Internet services.

Second, the rates charged by Bell Atlantic for Bell Atlantic DSL service bundled with Bell Atlantic.net effectively preclude any profitable provision of competitive Internet service offerings using Bell Atlantic DSL service. This is so because in addition to the rates provided as part of the VTDP, there are hidden costs to the independent ISPs – costs which Bell Atlantic's ISP may not incur. For example, the VDTP appears to require the wholesaler to provide its own

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[8] *See,* The Bell Atlantic Telcos. Access Service Tariff FCC Nos. 1 and 11, Transmittal 1138.

installation services,[9] yet the Tariff also requires the wholesaler to pay Bell Atlantic a nonrecurring installation charge.[10]

Without Commission guidance on appropriate cost allocation, the ILECs may employ anti-competitive cost allocation methods – even under a mandatory line sharing regime. If appropriate cost allocation methods are adopted by the Commission, competition in the provision of advanced services should emerge.

IV. LINE SHARING IS TECHNICALLY AND OPERATIONALLY FEASIBLE AND IS AN EFFICIENT USE OF THE LOCAL LOOP

It is clear that line sharing is technically feasible.[11] A customer purchasing a provider's DSL service can continue to receive his or her analog, switched voice service on the lower frequency bands, while the digital subscriber line service occupies the higher frequency bands. When an ILEC directly offers DSL, it uses a splitter to separate the voice and DSL services. Customers of competitive providers will receive DSL services in the very same manner in which ILECs provide DSL service to their residential customers. To the extent that ILECs and competing DSL providers both deploy compatible digital subscriber line access multiplexer ("DSLAM") equipment, there are no significant technical differences in the loop provisioning and central office configuration between the ILECs' DSL services and the DSL line sharing to be employed by competitive providers.

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9 See Section 16.8(F)(4)(a) of FCC Tariff No. 1 and Section 17.4.7(A) of FCC Tariff No. 11.

10 See Section 16.8(F)(2) of FCC Tariff No. 1 and Section 17.4.6(B) of FCC Tariff No. 11.

Additionally, CIX trusts that the Commission will adopt appropriate interference rules to ensure that providers operating on a line do not cause significant interference to other providers operating on the same line. Indeed, it is in all providers' interest to ensure that their services are not subject to harmful interference. These interference rules should apply equally to ILECs and competitors.

The Commission requests comments on ILEC concerns that billing, accounting and operational issues could complicate the provisioning of line sharing.[12] Such issues should not impede the provisioning of line sharing. Indeed, similar "line sharing" arrangements are currently employed in the provision of long distance services, and all such issues have been worked out effectively, resulting in a competitive market for the provision of long distance services. There is no reason why appropriate billing and operational arrangements cannot be established when sharing lines for the provision of advanced services.

V. MANDATORY LINE SHARING IS AN APPROPRIATE COMMISSION ACTION IN RESPONSE TO THE CONGRESSIONAL MANDATE OF SECTION 706 OF THE TELECOMMUNICATIONS ACT OF 1996

Among other things, DSL service provides consumers with "always-on," high-speed broadband Internet access. Broadband Internet services such as DSL mark the "beginning" of

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(footnote continued from previous page)

11 *FNPRM* at ¶ 103.

12 *FNPR* at ¶ 97.

the future of the Internet. Indeed, more bandwidth will be required to take advantage of many of the products and services that are being developed (i.e., video and music on demand) for the Internet. In the near future, traditional dial-up Internet access may not provide sufficient speed and capacity to take advantage of advanced Internet offerings. Unfortunately, the ILECs' virtual monopoly on the local loop has the potential to severely impede the development of widespread residential use of broadband services.

As noted, at present, if a customer wants to retain its ILEC voice service, competitive DSL providers can offer DSL services only over a stand-alone loop. Thus, residential consumers must install an additional line at their home in order to obtain DSL services from a competitive provider. At this time, most consumers have determined either that the cost of installing an additional line simply to obtain a competitor's high-speed Internet access is not worth the additional cost or that the cost is outright prohibitive. Adoption of rules requiring line sharing will have two immediate effects on residential use of high-speed, broadband Internet access services: (1) it will eliminate the cost of installing a largely duplicative telecommunications line into a consumer's home and (2) it will increase competition for the provision of high-speed, broadband Internet access.

Competitive providers of advanced services will be able to offer their services at prices that are competitive with – and perhaps cheaper than – those offered by the ILECs.[13] Ultimately, less expensive, high-speed, broadband Internet access will result in a greater number of

consumers having access to high-speed, broadband Internet access service. This is a result that Congress envisioned in its enactment of Section 706 of the Telecommunications Act of 1996. The Commission should make that vision a reality by requiring mandatory line sharing.

VI. CONCLUSION

The ILECs should not be able to extend their control over the local loop into an unfair advantage in the provision of advanced service offerings. Mandatory line sharing will prevent the ILEC from gaining such an advantage and will further a robust and competitive DSL marketplace. For all of the above stated reasons, the Commercial Internet eXchange Association respectfully requests that the Commission adopt rules requiring line sharing.

Respectfully submitted,

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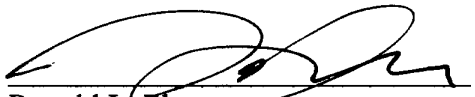

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[13] Competition will also lead to new innovations and product/services as advanced services providers compete not only on price but on a host of value-added services.

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January 1999

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CERTIFICATE OF SERVICE

I, Peter Hannon, a legal assistant at the law firm of Piper & Marbury L.L.P., hereby certify that a true and correct copy of the Comments of The Commercial Internet Exchange Association was sent via hand-delivery to the following individuals, this 15th day of June, 1999.

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